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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,504	06/06/2005	Robert Ungemach	P05841US00	1298
22885	7590	01/12/2006	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			PETRIK, KARI KRISTEN	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/523,504	<b>Applicant(s)</b> UNGEMACH ET AL.	
	<b>Examiner</b> Kari Petrik	<b>Art Unit</b> 3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/09/2005, 8/17/2005, 10/3/2005</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statements (IDS) submitted on 06/09/2005, 08/17/2005, and 10/03/2005 are being considered by the examiner.

### ***Claim Objections***

2. Claim 10 is objected to because of the following informalities: The claim states: "heating so as to formable into..." It appears that the claim should be amended to read: --heating so as to be formable into...--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Vilsmeier et al (US Patent 5,702,406). Vilsmeier et al discloses a patient restraint member comprising a sheet of thermoplastic material (10) having spaced apart groups of perforations and solid bands extending between the groups of perforations and extending at least partially across the sheet (Figure 1A).

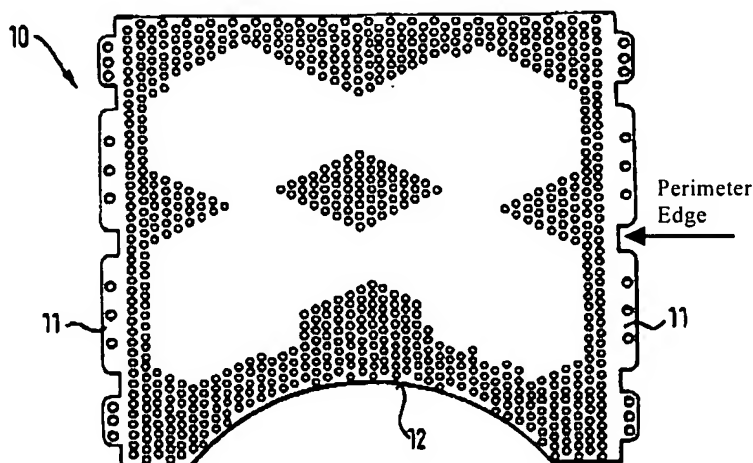
***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-8 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vilsmeier (US Patent 5,702,406). Vilsmeier et al discloses a thermoplastic sheet (10) having groups of perforations and solid bands extending across the sheet between the groups of perforations to provide rigidity (Figure 1A). The solid bands criss-cross the sheet and intersect at a location spaced inwardly from the edge. Vilsmeier et al also discloses a thermoplastic sheet having a non-perforated edge (the arrow in Figure 1A below is considered a non-perforated edge). Vilsmeier et al does not disclose that the solid bands extend completely across the sheet, and do not disclose that they extend in a perpendicular or non-perpendicular angle from the perimeter edge.

**FIG. 1A**



However, a thorough reading of the specification provides no criticality to the arrangement of the bands. Specifically, Applicant has not disclosed that having bands that extend from the perimeter edge at a perpendicular angle or non-perpendicular angle provides an advantage over bands extending through the sheet at any other angle.

At the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the thermoplastic sheet with the varying solid band configurations, because Applicant has not disclosed that such configurations provide an advantage, are used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Vilsmeier et al.'s thermoplastic sheet and Applicant's invention to perform equally well with either the solid bands used by Vilsmeier et al, or the various claimed designs of solid bands and perforations because both configurations would perform the same function of providing rigidity.

Therefore, it would have been *prima facie* obvious to modify Vilsmeier et al to obtain the invention as specified in the claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Vilsmeier et al.

### **Conclusion**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kari Petrik whose telephone number is (571)272-8057. The examiner can normally be reached on M-F 8-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KKP

  
Henry Bennett  
Supervisory Patent Examiner  
05/09/00